

§ 51.103 Record of decision—general.

(a) The record of decision required by § 51.102 shall be clearly identified and shall:

- (1) State the decision.
- (2) Identify all alternatives considered by the Commission in reaching the decision, state that these alternatives were included in the range of alternatives discussed in the environmental impact statement, and specify the alternative or alternatives which were considered to be environmentally preferable.
- (3) Discuss preferences among alternatives based on relevant factors, including economic and technical considerations where appropriate, the NRC's statutory mission, and any essential considerations of national policy, which were balanced by the Commission in making the decision and state how these considerations entered into the decision.
- (4) State whether the Commission has taken all practicable measures within its jurisdiction to avoid or minimize environmental harm from the alternative selected, and if not, to explain why those measures were not adopted. Summarize any license conditions and monitoring programs adopted in connection with mitigation measures.
- (5) In making a final decision on a license renewal action pursuant to part 54 of this chapter, the Commission shall determine whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.

(b) The record of decision may be integrated into any other record prepared by the Commission in connection with the action.

(c) The record of decision may incorporate by reference material contained in a final environmental impact statement.

[49 FR 9381, Mar. 12, 1984, as amended at 61 FR 28490, June 5, 1996; 61 FR 66546, Dec. 18, 1996; 61 FR 68543, Dec. 30, 1996]

§ 51.104 NRC proceeding using public hearings; consideration of environmental impact statement.

(a)(1) In any proceeding in which (i) a hearing is held on the proposed action, (ii) a final environmental impact statement has been prepared in connection with the proposed action, and (iii) matters within the scope of NEPA and this subpart are in issue, the NRC staff may not offer the final environmental impact statement in evidence or present the position of the NRC staff on matters within the scope of NEPA and this subpart until the final environmental impact statement is filed with the Environmental Protection Agency, furnished to commenting agencies and made available to the public.

(2) Any party to the proceeding may take a position and offer evidence on the aspects of the proposed action within the scope of NEPA and this subpart in accordance with the provisions of part 2 of this chapter applicable to that proceeding or in accordance with the terms of the notice of hearing.

(3) In the proceeding the presiding officer will decide those matters in controversy among the parties within the scope of NEPA and this subpart.

(b) In any proceeding in which a hearing is held where the NRC staff has determined that no environmental impact statement need be prepared for the proposed action, unless the Commission orders otherwise, any party to the proceeding may take a position and offer evidence on the aspects of the proposed action within the scope of NEPA and this subpart in accordance with the provisions of part 2 of this chapter applicable to that proceeding or in accordance with the terms of the notice of hearing. In the proceeding, the presiding officer will decide any such matters in controversy among the parties.

PRODUCTION AND UTILIZATION FACILITIES

§ 51.105 Public hearings in proceedings for issuance of construction permits or licenses to manufacture.

(a) In addition to complying with applicable requirements of § 51.104, in a proceeding for the issuance of a construction permit for a nuclear power

reactor, testing facility, fuel reprocessing plant or isotopic enrichment plant, or for the issuance of a license to manufacture, the presiding officer will:

(1) Determine whether the requirements of section 102(2) (A), (C), and (E) of NEPA and the regulations in this subpart have been met;

(2) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken;

(3) Determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the construction permit or license to manufacture should be issued, denied, or appropriately conditioned to protect environmental values;

(4) Determine, in an uncontested proceeding, whether the NEPA review conducted by the NRC staff has been adequate; and

(5) Determine, in a contested proceeding, whether in accordance with the regulations in this subpart, the construction permit or license to manufacture should be issued as proposed.

§ 51.106 Public hearings in proceedings for issuance of operating licenses.

(a) Consistent with the requirements of this section and as appropriate, the presiding officer in an operating license hearing shall comply with any applicable requirements of §§ 51.104 and 51.105.

(b) During the course of a hearing on an application for issuance of an operating license for a nuclear power reactor, or a testing facility, the presiding officer may authorize, pursuant to § 50.57(c) of this chapter, the loading of nuclear fuel in the reactor core and limited operation within the scope of § 50.57(c) of this chapter, upon compliance with the procedures described therein. In any such hearing, where any party opposes such authorization on the basis of matters covered by subpart A of this part, the provisions of §§ 51.104 and 51.105 will apply, as appropriate.

(c) The presiding officer in an operating license hearing shall not admit

contentions proffered by any party concerning need for power or alternative energy sources or alternative sites for the facility for which an operating license is requested.

(d) The presiding officer in an operating license hearing shall not raise issues concerning alternative sites for the facility for which an operating license is requested *sua sponte*.

MATERIALS LICENSES

§ 51.108 [Reserved]

§ 51.109 Public hearings in proceedings for issuance of materials license with respect to a geologic repository.

(a)(1) In a proceeding for issuance of a construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 and 63 of this chapter, and in a proceeding for issuance of a license to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area under parts 60 and 63 of this chapter, the NRC staff shall, upon the publication of the notice of hearing in the FEDERAL REGISTER, present its position on whether it is practicable to adopt, without further supplementation, the environmental impact statement (including any supplement thereto) prepared by the Secretary of Energy. If the position of the staff is that supplementation of the environmental impact statement by NRC is required, it shall file its final supplemental environmental impact statement with the Environmental Protection Agency, furnish that statement to commenting agencies, and make it available to the public, before presenting its position, or as soon thereafter as may be practicable. In discharging its responsibilities under this paragraph, the staff shall be guided by the principles set forth in paragraphs (c) and (d) of this section.

(2) Any other party to the proceeding who contends that it is not practicable to adopt the DOE environmental impact statement, as it may have been supplemented, shall file a contention to that effect within thirty (30) days after the publication of the notice of hearing in the FEDERAL REGISTER.